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CONTENTS

ACT

No.		Page
14	Sales Tax Act, 1995	423

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SALES TAX ACT NO.14 OF 1995

ARRANGEMENTS OF SECTIONS

Section

**CHAPTER I
PRELIMINARY**

1. Short Title
2. Commencement
3. Interpretation
4. Fair Market Value.

**CHAPTER II
SALES TAX**

5. Levy of Sales Tax
6. Exemptions
7. Persons Liable to Pay Tax

**CHAPTER III
SUPPLIES AND IMPORTS**

8. Supply of Goods or Services
9. Time of Supply
10. Place of Supply
11. Imports

**CHAPTER IV
TAXABLE SUPPLIES**

12. Taxable Supply

**CHAPTER V
TAXABLE VALUE**

13. Taxable Value of a Taxable Supply
14. Adjustments
15. Taxable Value of an Import

**CHAPTER VI
VENDORS**

16. Registration of Vendors

17. Cancellation of Registration or Sales Tax Exemption Certificate

CHAPTER VII CALCULATION OF SALES TAX PAYABLE

18. Calculation of Sales Tax Payable on a Taxable Transaction
19. Calculation of Sales Tax Payable by a Vendor for a Tax Period
20. Credit for Input Tax
21. Sales Tax Invoices
22. Credit and Debit Notes
23. Bad Debts

CHAPTER VIII PROCEDURE AND ADMINISTRATION

PART I RETURNS AND ASSESSMENTS

24. Returns
25. Assessments
26. Deemed Assessments
27. General Provisions Relating to Assessments

PART II OBJECTIONS AND APPEALS

28. Interpretation
29. Objection to Assessment
30. Appeal to Tribunal
31. Appeal to High Court of Lesotho
32. Appeal to Court of Appeal
33. Burden of Proof

PART III COLLECTION AND RECOVERY

34. Due Date for Payment of Sales Tax
35. Sales Tax as a Debt Due to the Lesotho Government
36. Security
37. Preferential Claim to Assets
38. Seizure of Goods
39. Distress Proceedings
40. Recovery of Sales Tax from Recipient of the Supply
41. Recovery of Sales Tax from Third Parties
42. Duties of Receivers

PART IV
REFUND OF SALES TAX

- 43. Refund of Overpaid Sales Tax
- 44. Refund of Sales Tax to Diplomats, Diplomatic and Consular Missions, Public International Organisations, Contractors, and Charitable Organisations

PART V
RECORDS AND INVESTIGATION POWERS

- 45. Accounts and Records
- 46. Access to Books, Records, and Computers
- 47. Notice to Obtain Information or Evidence
- 48. Books and Records not in Sesotho or English Language

PART VI
TAXPAYER IDENTIFICATION NUMBER

- 49. Taxpayer Identification Number

PART VII
ADDITIONAL TAX AND OFFENCES

Division I
Additional Tax

- 50. Additional Tax for Failure to Apply for Registration
- 51. Additional Tax for Failure to File a Return

- 52. Additional Tax for Failure to Pay Sales Tax When Due
- 53. Additional Tax in Relation to Records
- 54. Additional Tax in Relation to False or Misleading Statements
- 55. Recovery of Additional Tax

Division II
Offences

- 56. Offences Related to Registration
- 57. Offences Related to Sales Tax Invoices, Credit Notes, and Debit Notes
- 58. Failure to File a Return
- 59. Failure to Give Security
- 60. Failure to Comply with Recovery Provisions
- 61. Failure to Maintain Proper Records
- 62. Failure to Provide Reasonable Assistance
- 63. Failure to Comply with a Section 47 Notice
- 64. Improper Use of Taxpayer Identification Number
- 65. Failure to Maintain Secrecy

66. Breach of Section 81
67. False or Misleading Statements
68. Obstructing Taxation Officers
69. Offences by Companies

PART VIII ADMINISTRATION

Division I Office of the Commissioner of Sales Tax

70. Appointment of Commissioner and Deputy Commissioner of Sales Tax
71. Delegation
72. Secrecy

Division II Forms and Notices

73. Forms and Notices; Authentication of Documents
74. Service of Notices and Other Documents

Division III Nominated Person

75. Nominated Person

Division IV Application of Act to Partnerships, Unincorporated Associations, Trustees, and Agents

76. Application of Act to Partnerships and Unincorporated Associations
77. Trustees
78. Agents and Auctioneers

CHAPTER IX MISCELLANEOUS PROVISIONS

79. Schemes for Obtaining Undue Sales Tax Benefits
80. Goods Requiring Registration
81. Prohibition on Advertising
82. International Agreements
83. Regulations and Amendment of Schedules
84. Repeal
85. Transitional

SCHEDULES

- Schedule I. Public International Organisations (Section 3)
Schedule II. Exemption for Imports (Section 6)

SALES TAX ACT, 1995

ACTNO. 14 OF 1995

[Date of assent: 26.03.1996]

[Commencement: see section 2]

An Act to consolidate and amend the law relating to sales tax,

Enacted by the Parliament of Lesotho:

CHAPTER 1 PRELIMINARY

Short Title

1. This Act may be cited as the Sales Tax Act, 1995.

Commencement

2. This Act comes into operation on the date it is published in the Gazette.

Interpretation

3. In this Act, unless the context otherwise requires .
“application to own use”, in relation to goods or services, means applying the goods or services to a non-business use (including such use by a relative);

“associate”, in relation to a person, means any other person who acts or is likely to act in accordance with the directions, requests, suggestions, **or** wishes of the first-mentioned person whether or not they are communicated to that other person;

“auction” includes the sale of goods out-of-hand by the auctioneer;

“auctioneer” means a person licensed as an auctioneer under the Auction Sales Proclamation, 1919;

“capital goods” means plant and equipment (including spare parts therefor, but not including registrable motor vehicles) for use directly in manufacturing;

“Commissioner” means the Commissioner of Sales Tax appointed under section 70;

“company” means a body corporate or unincorporate, whether created or recognised under a law in force in Lesotho or elsewhere, but does not include a partnership or trust;

“consideration”, in relation to a supply or import, means the total amount in money or kind paid or payable for the supply or import by any person, directly or indirectly, including any duties, levies, fees, or charges paid or payable on, or by reason of; the supply or import other than sales tax, reduced by any price discounts or rebates allowed and accounted for at the time of the supply or import;

“enterprise” means any undertaking in the ordinary course of which goods or services are supplied;

“export” means .

- (a) in the case of goods, the delivery of the goods to, or the making available of the goods at, an address outside Lesotho for use or consumption outside Lesotho as evidenced by documentary proof acceptable to the Commissioner; or
- (b) in the case of services, the supply of the services for use or consumption outside Lesotho as evidenced by documentary proof acceptable to the Commissioner, not being services which are supplied directly in connection with any movable or immovable property situated in Lesotho at the time of the supply;

“finance lease”, in relation to goods, means the lease of the goods where -

- (a) the lease term exceeds 75% of the effective life of the goods for income tax purposes;
- (b) the lessee has an option to purchase the goods for a fixed or determinable price at the expiration of the lease; or
- (c) the estimated residual value of the goods to the lessor at the expiration of the lease term (including the period of any option to renew) is less than 20% of its fair market value at the commencement of the lease;

“goods” means tangible movable property, and buildings and other developments to immovable property, but does not include money;

“hire purchase agreement” means an agreement that is a hire purchase agreement for the purposes of the Hire-Purchase Act, 1974;

“import” has the meaning in section 11(1);

“importer” means .

- (a) in relation to an import of goods, the person who is possessed of the goods at the time of the import; and
- (b) in relation to an import of services, the person to whom the services are provided;

“input tax” means sales tax paid or payable in respect of a taxable supply to, or an import of goods or services by, any person;

“international agreement” means an agreement between Lesotho and a foreign government or a public international organisation.

“manufacturer” means a vendor who is licensed as a manufacturing enterprise under the Industrial Licensing Act, 1969;

“manufacturing” means the substantial transformation of tangible movable property, but does not include construction, installation, assembly, transportation, power generation, or the provision of public utility services;

“Minister” means the Minister of Finance;

"money" means -

- (a) coins or paper currency that the Central Bank of Lesotho has issued as legal tender;
- (b) coins or paper currency of a foreign country which is used or circulated, as currency; or
- (c) a bill of exchange, promissory note, bank draft, postal order, or money order,

other than coins or paper currency that is a collector's piece or is otherwise of numismatic interest;

“nominated person” has the meaning in section 75;

“non-resident” means a person who is not a resident of Lesotho;

“objection decision” means a decision of the Commissioner on an objection filed by a person;

"person" includes a partnership, company, trust, government, political subdivision of a government, or public international organisation;

“public international organisation” means an organisation listed in Schedule I to the Act

“reduced consideration”, in relation to a supply or import, means no consideration or a consideration that is less than the fair market value of the supply or import;

“relative”, in relation to an individual, means an ancestor of the individual, a descendant of the individual's grandparents, or the spouse of the individual or of any of the foregoing;

“resident” means -

- (a) a person who is a resident of Lesotho but who has been in Lesotho for a period or periods in total of less than 7 years; or

- (b) any other person who carries on an enterprise in Lesotho through a fixed place of business (including the fixed place of business of an agent of the person);

“sales tax” means tax imposed under this Act;

“sales tax exemption certificate” means a certificate issued under section 16(8);

“sales tax invoice” is an invoice required to be provided under section 21;

“sales tax registration certificate” means a certificate issued under section 16;

services” includes any rights, benefits, privileges, or facilities;

“taxable supply” has the meaning in section 12;

“taxable transaction” means a transaction subject to sales tax under this Act;

“taxable value”, in relation to a taxable supply or import, is determined under Chapter V of this Act;

“taxable vendor” means a vendor who has not been issued with a sales tax exemption certificate or whose sales tax exemption certificate has been cancelled or suspended;

“tax period” means the period of one month ending on the last day of each of the twelve months of the calendar year;

“trust” means any relationship where property is under the control or management of a trustee;

“trustee” includes -

- (a) an executor, administrator, tutor, or curator;
- (b) a liquidator or judicial manager;
- (c) a person having or taking on the administration or control of property subject to another person having a beneficial interest in the property;
- (d) a person acting in a fiduciary capacity; or
- (e) a person having the possession, control, or management of the property of a person under a legal disability;

“unregistered vendor” means a vendor who has not applied for registration as required by section 16; and

“vendor” means a person who is, or is required to apply to be, registered under this Act.

Fair Market Value

4. (1) In this section, “similar supply or import”, in relation to a taxable supply or import, means a supply or import that is identical to, or closely or substantially resembles, the first-mentioned supply or import, having regard to the characteristics, quality, quantity supplied, functional components and reputation of; and materials comprising, the goods or services the subject of that supply or import.

(2) For the purposes of this Act, the fair market value of a taxable supply or an import at any date is the consideration in money which a similar supply or import would generally fetch if supplied or imported in similar circumstances at that date, being a supply or import freely offered and made between persons who are not associates.

(3) Where the fair market value of a taxable supply or an import cannot be determined under subsection (2), the fair market value of the supply or import shall be such amount that, in the opinion of the Commissioner having regard to all the circumstances of the supply or import, is the fair market value of the supply or import.

CHAPTER II SALES TAX

Levy of Sales Tax

5. Subject to this Act, sales tax is hereby imposed on -

- (a) every taxable supply in Lesotho; and
- (b) every import of goods or services.

Exemptions

6. (1) In this section,

“education services” means education provided by .

- (a) a pre-primary, primary, or secondary school;
- (b) a college or university; or
- (c) an institution established for the promotion of adult education, vocational training, technical education, or the education or training of physically or mentally handicapped persons;

which is registered with the Ministry of Education.

“financial services” means .

- (a) granting, negotiating, and dealing with loans, credit, credit guarantees, and

any security for money, including management of loans, credit, or credit guarantees by the grantor;

- (b) transactions concerning deposit and current accounts, payments, transfers, debts, cheques, and negotiable instruments, other than debt collection and factoring;
- (c) transactions relating to shares, stocks, bonds, and other securities, other than custodial services; or
- (d) management of investment funds;

“prescribed person” means -

- (a) in the case of an import by a vendor, the Commissioner or an officer authorised by the Commissioner in writing for this purpose; or
- (b) in any other case, the vendor supplying the goods or services;

“transportation services” means the transportation of fare-paying passengers and their personal effects by road or air.

(2) Sales tax is not payable in respect of-

- (a) an import of goods prescribed in Schedule II;
- (b) a supply to, or an import by, a vendor of goods or services where the vendor has, at the time of the supply or import, produced the vendor’s sales tax exemption certificate to the prescribed person and, in the course or furtherance of an enterprise carried on by the vendor -
 - (i) in the case of goods, the vendor has acquired the goods for use as raw materials in manufacturing or for re-supply in substantially the same state; or
 - (ii) in the case of services, the vendor has acquired the services for use directly in manufacturing, and where the services relate to the installation, repair, or maintenance of capital goods;
- (c) a supply to, or an import by, a manufacturer of capital goods, where the manufacturer has, at the time of the supply or import, produced the manufacturer’s sales tax exemption certificate to the prescribed person;
- (d) a supply of goods as part of the transfer of an enterprise as a going concern by a vendor to another vendor (other than a taxable vendor);
- (e) a supply of goods to, or an import of goods by, an employee of a foreign government or public international organisation seconded to Lesotho where-

- (i) the goods are personal effects;
- (ii) the supply or import takes place within six months of the employee's arrival in Lesotho; and
- (iii) the exemption is provided for in an international agreement; and

(f) the supply of-

- (i) water;
- (ii) public postal services;
- (iii) transportation services;
- (iv) medical and dental services;
- (v) financial services;
- (vi) insurance services; or
- (vii) education services.

(3) Where subsection (2)(d) applies, both vendors shall immediately notify the Commissioner in writing of the details of the transfer, including in particular the quantities and value of goods on hand (including raw materials) at the date of the transfer on which sales tax has not been paid or has been credited as input tax.

Persons Liable to Pay Tax

7. Except as otherwise provided by or under this Act, the sales tax payable -
- (a) in the case of a taxable supply, is to be paid by the vendor; or
 - (b) in the case of an import of goods or services, is to be paid by the importer.

CHAPTER III SUPPLIES AND IMPORTS

Supply of Goods or Services

8. (1) In this section,

“benefit” includes a fringe benefit as defined in section 115 of the Income Tax Act, 1993, but does not include a benefit that is an exempt benefit under section 118(a) of the Income Tax Act, 1993;

“employee” has the meaning in sections 3(1) and 115 of the Income Tax Act, 1993;

“employer” has the meaning in sections 3(1) and 115 of the Income Tax Act, 1993; and

“employment” has the meaning in section 3(1) of the Income Tax Act, 1993.

(2) Except as otherwise provided by or under this Act, a supply of goods means any arrangement under which the owner of the goods parts or will part with possession of the goods including an agreement of sale and purchase.

(3) An application of goods to own use is a supply of the goods.

(4) Except as otherwise provided by or under this Act, a supply of services means the performance of services for another person and includes -

(a) the making available of any facility or advantage;

(b) the toleration of any situation or the refraining from the doing of any act;
or

(c) the application of services to own use.

(5) A supply of services made by an employee to an employer by reason of employment is not a supply made by the employee.

(6) A benefit provided by a vendor being an employer to an employee that consists of a supply of goods or services is treated as a supply of the goods or services made by the vendor for consideration in the course or furtherance of an enterprise carried on by the vendor.

(7) A supply of services incidental to the supply of goods is part of the supply of goods.

(8) A supply of goods incidental to the supply of services is part of the supply of services.

(9) A supply of services incidental to the import of goods is part of the import of goods.

(10) Regulations may provide that a supply is a supply of goods or services.

(11) Subject to subsections (12) and (13), a supply of goods or services -

(a) made by a person as agent for another person (“the principal”) is a supply by the principal; or

(b) made to a person as agent for a principal is a supply to the principal

(12) Subsection (11) does not apply to an agent’s supply of services as agent to the principal.

(13) A supply of goods by auction is treated as a supply of goods for consideration by the auctioneer as vendor made in the course or furtherance of an enterprise carried on by the auctioneer.

Time of Supply

9. (1) In this section, “rental agreement” means any agreement for the letting of goods

other than a hire purchase agreement or finance lease.

(2) Subject to subsections (3) and (4), a supply of goods or services occurs -

- (a) where goods are supplied by auction (other than by way of a sale out-of-hand), on the date of the auction;
- (b) where the goods or services are applied to own use, on the date on which the goods or services are first applied to own use;
- (c) where the goods or services are supplied by way of gift, on the date on which ownership in the goods passes or the performance of the services is completed; or
- (d) in any other case, on the earlier of -
 - (i) the date on which the goods are delivered or made available, or the performance of the services is completed;
 - (ii) the date on which the invoice for the supply is issued; or
 - (iii) the date on which payment for the supply is made.

(3) The supply of goods under a hire purchase agreement or finance lease occurs on the date of commencement of the hire or lease.

(4) Where -

- (a) goods are supplied under a rental agreement; or
- (b) goods or services are supplied under an agreement or law which provides for periodic payments,

the goods or services are treated as successively supplied for successive parts of the period of the agreement or as determined by such law, and each successive supply occurs on the earlier of the date on which the payment is due or received.

(5) A person making a supply to which subsection (2)(b) or (c) applies, shall keep a record of the date on which the supply occurred as determined under this section.

Place of Supply

10. (1) Except as otherwise provided by or under this Act, a supply of goods occurs at the place where the goods are delivered or made available by the supplier or, if the delivery or making available involves the goods being transported, the place where the goods are when the transportation commences.

(2) Except as otherwise provided by or under this Act, a supply of services occurs at the place where the services are performed.

(3) A supply of services in connection with movable or immovable property occurs at the place where the property is located.

(4) A supply of services of, or incidental to, transport takes place where the transport occurs.

(5) A supply of services to which section 12(2) applies is treated as having been made in Lesotho.

Imports

11. (1) Import means

(a) in the case of goods, brought into Lesotho from a foreign country or place; or

(b) in the case of services, a supply of services by -

(i) a non-resident; or

(ii) a resident of Lesotho in the course or furtherance of an enterprise carried on outside Lesotho,

where the services are supplied for use or consumption in Lesotho.

(2) An import of goods occurs -

(a) where the goods require clearance under the Customs and Excise Act, 1982, on the date on which the clearance is made; or

(b) in any other case, on the date the goods are brought into Lesotho.

(3) An import of services occurs on the earlier of-

(a) the date on which the performance of the services is completed;

(b) the date on which the invoice for the services is issued; or

(c) the date on which the payment for the services is made.

CHAPTER 1V TAXABLE SUPPLIES

Taxable Supply

12. (1) A taxable supply means a supply of goods or services (other than a supply which is exempt from sales tax under section (6) made by a vendor for consideration in the course or furtherance of an enterprise carried on by the vendor.

(2) A taxable supply includes a supply by way of an export of goods or services by a vendor for consideration in the course or furtherance of an enterprise carried on by the

vendor.

(3) A supply is made in the course or furtherance of an enterprise carried on by a vendor if the supply is made by the vendor as part of, or incidental to, any independent economic activity of the vendor, whatever the purposes or results of that activity.

(4) An enterprise of an individual does not include activities carried on by that individual only as part of that individual's hobby or leisure activities.

(5) A supply is made for consideration if the person making the supply receives, directly or indirectly, payment for the supply, whether from the person supplied or any other person, including any payment wholly or partly in money or kind.

(6) The following are treated as being supplied for consideration -

- (a) the application to own use by a vendor of goods supplied to that vendor for the purposes of the vendor's enterprise;
- (b) the application to own use by a vendor of services ordinarily supplied by the vendor in the course or furtherance of an enterprise carried on by the vendor;
- (c) the supply of goods for reduced consideration by a vendor being goods supplied to that vendor for the purposes of the vendor's enterprise, unless the goods are supplied or used only as trade samples; or
- (d) the supply of services for reduced consideration by a vendor being services ordinarily provided by the vendor in the course or furtherance of an enterprise carried on by the vendor.

CHAPTER V TAXABLE VALUE

Taxable Value of a Taxable Supply

13. (1) Except as otherwise provided by or under this Act, the taxable value of a taxable supply is the consideration for that supply.

(2) The taxable value of-

- (a) a taxable supply of goods under a hire purchase agreement or finance lease;
- (b) a taxable supply by way of application to own use; or
- (c) a taxable supply for reduced consideration, is the fair market value of the supply at the time of the supply.

(3) The taxable value of a taxable supply of used goods purchased from a person who is not a vendor by a vendor whose enterprise involves the re-supply of such goods in substantially the same state is equal to the excess (if any) of-

A-B

where,

A is the consideration for which the goods are supplied by the vendor; and

B is the consideration for which the goods were acquired by the vendor.

(4) The Minister may make regulations for the determination of the taxable value of a taxable supply of used goods.

Adjustments

14. (1) This section applies where, in relation to a taxable supply by a vendor -

- (a) the supply is cancelled;
- (b) the nature of the supply has been fundamentally varied or altered;
- (c) the previously agreed consideration for the supply has been altered by agreement with the recipient of the supply, whether due to an offer of a discount or for any other reason; or
- (d) the goods or part thereof have been returned to the vendor,

and the vendor making the supply has -

- (e) provided a sales tax invoice in relation to the supply and the amount shown therein as the sales tax charged on the supply is incorrect as a result of the occurrence of any one or more of the above-mentioned events; or
- (1) filed a sales tax return for the tax period in which the supply occurred and has accounted for an incorrect amount of sales tax on that supply as a result of the occurrence of any one or more of the above mentioned events.

(2) Where subsection (1) applies, the vendor making the supply shall make an adjustment as specified in subsection (3) or (4).

(3) Where the sales tax properly chargeable in respect of the supply exceeds the sales tax paid by the vendor making the supply, the amount of the excess is treated as sales tax charged by the vendor in respect of a taxable supply made in the tax period in which the event referred to in subsection (1) occurred.

(4) Subject to subsection (5), where the sales tax paid by the vendor making the supply exceeds the sales tax properly chargeable in respect of the supply, the vendor making the supply shall be allowed a credit for the amount of the excess in the tax period in which the event referred to in subsection (1) occurred.

(5) No credit is allowed under subsection (4) unless the amount of the excess sales tax has been repaid by the vendor to the recipient of the supply, whether in cash or as a credit against any amount owing to the vendor by the recipient.

Taxable Value of an Import

15. (1) The taxable value of an import of goods is the sum of-

- (a) the value of the goods ascertained for the purposes of customs or excise duty under the Customs and Excise Act, 1982 whether or not any duty is payable on those goods;
- (b) the amount of customs or excise duty, if any, payable on those goods; and
- (c) the value of any services to which section 8(9) applies which is not otherwise included in the taxable value under paragraph (a), including any services giving rise to commission, packaging, transportation, insurance, or warranty expenses payable on, or by reason of the import.

(2) Subject to subsection (3), the taxable value of an import of services is the consideration for the import.

(3) The taxable value of an import of services for reduced consideration is the fair market value of the import at the time of the import

CHAPTER VI VENDORS

Registration of Vendors

16. (1) A person who is not already a vendor is required to apply to be registered -

- (a) within fourteen days of the end of any period of twelve months if during that period the person made taxable supplies the taxable value of which exceeded the registration threshold set out in subsection (2); or
- (b) at the beginning of any period of twelve months where there are reasonable grounds to expect that the total taxable value of taxable supplies to be made by the person during that period will exceed the registration threshold set out in subsection (2).

(2) The registration threshold is the amount prescribed for the time being by the Minister by notice in the Gazette and the Minister may prescribe different registration thresholds in respect of the supply of goods and the supply of services.

(3) In determining whether the taxable value of taxable supplies made by a person during the period specified in subsection (1) (the "relevant period") exceed the registration threshold -

- (a) the Commissioner may have regard to the taxable value of taxable supplies made by an associate of the person during the relevant period;
- (b) it is to be assumed that the person or an associate of the person is a vendor during the relevant period; and

(c) the exemptions in sections 6(2)(b) and 6(2)(c) are to be ignored.

(4) A person making taxable supplies (determined on the assumption that the person is a vendor and ignoring sections 6(2)(b) and (c)), but who is not required by subsection (1) to apply for registration may apply to the Commissioner to be registered and, at the discretion of the Commissioner, the Commissioner may register the person and issue the person with a sales tax registration certificate.

(5) Notwithstanding subsection (1), a person who is an auctioneer is required to apply for registration on the date on which the person becomes an auctioneer.

(6) An application for registration shall be in the form approved by the Commissioner and the applicant shall provide such further information as the Commissioner may require.

(7) The Commissioner shall register a person who applies for registration in accordance with subsection (1) or (5) and issue to the person a sales tax registration certificate unless the Commissioner is satisfied that the person is not eligible to apply for registration for the purposes of the Act.

(8) The Commissioner shall issue a sales tax exemption certificate to a person registered under subsection (4) or (7) unless -

- (a) the person has no fixed place of abode or business; or
- (b) the Commissioner has reasonable grounds to believe that the person -
 - (i) will not keep proper accounting records relating to an enterprise carried on by that person;
 - (ii) will not submit regular and reliable sales tax returns as required by section 24; or
 - (iii) is not a fit and proper person to hold a sales tax exemption certificate.

(9) The Commissioner may register a person, whom the Commissioner has reasonable grounds to believe is required to apply for registration under this section but who has failed to do so.

(10) Registration under this section takes effect from the date of registration as specified in the sales tax registration certificate or such later date as the Commissioner may determine.

(11) A sales tax exemption certificate issued under this section takes effect from the date of issue or, where good cause is shown by the applicant, such other date as the Commissioner may determine.

(12) The Commissioner may -

- (a) impose conditions or limitations on a registration or a sales tax exemption certificate; or
- (b) suspend, or modify the conditions or limitations on, a registration or a sales tax exemption certificate.

(13) The Commissioner shall serve a notice in writing on a person of-

- (a) a decision to refuse to register the person under subsection (4) or (7), or issue the person with a sales tax exemption certificate under subsection (8);
- (b) a decision to register a person under subsection (9); or
- (c) a decision under subsection (12) relating to the person's registration or sales tax exemption certificate,

within seven days of making the decision.

(14) A person dissatisfied with a decision referred to in subsection (13) may only challenge the decision under Part II of Chapter VIII of this Act on the basis that the decision is an assessment.

(15) A vendor shall notify the Commissioner in writing of any change in the name, commercial name, address, or place of business of the vendor and such notification shall be made within fourteen days of the change occurring.

Cancellation of Registration or Sales Tax Exemption Certificate

17. (1) A vendor is required to apply in writing to the Commissioner to have the vendor's registration cancelled if the vendor has ceased to make supplies of goods or services for consideration in the course or furtherance of an enterprise carried on by the vendor.

(2) Subject to subsection (3), a vendor may apply in writing to have the vendor's registration cancelled it with respect to the most recent twelve month period, the taxable value of taxable supplies made by the vendor during that period do not exceed the registration threshold in section 16.

(3) In the case of a vendor who applied for registration under section 16(4), an application under subsection (2) may only be made after the expiration of two years from the date of registration.

(4) The Commissioner shall cancel the registration of-

- (a) a vendor Who has properly applied for cancellation of registration under subsection (1) or (2); or
- (b) a vendor who has not applied for cancellation of registration but, in relation to whom, the Commissioner is satisfied that the vendor is neither required nor entitled under section 16 to apply for registration.
- (5) The Commissioner may cancel the registration of a vendor who is not required to apply for registration under section 16 or the sales tax exemption certificate of any vendor where the vendor
 - (a) is in breach of the conditions or limitations attaching to the registration or certificate;
 - (b) has no fixed place of abode or business;
 - (c) has not kept proper accounting records relating to any enterprise carried on by the vendor;
 - (d) has not submitted regular and reliable sales tax returns as required by section 24; or

(e) is not, in the opinion of the Commissioner, a fit and proper person to be registered or to hold a sales tax exemption certificate.

(6) The Commissioner shall give a vendor notice in writing of a decision to cancel or to refuse to cancel a registration or sales tax exemption certificate within fourteen days of making the decision.

(7) The cancellation of a registration or sales tax exemption certificate takes effect from the date specified by the Commissioner in the notice of cancellation.

(8) A person dissatisfied with a decision referred to in subsection (6) may only challenge the decision under Part II of Chapter VIII of this Act on the basis that the decision is an assessment.

(9) A vendor whose registration is cancelled under this section is treated as having made a taxable supply in Lesotho of all goods on hand (including raw materials) at the date the registration is cancelled on which sales tax has either not been paid or has been credited as input tax for the fair market value of the goods at that date.

(10) The obligations and liabilities under this Act (including the filing of returns required by section 24) of any person in respect of anything done or omitted to be done by that person while the person is a vendor is not affected by cancellation of the person's registration.

CHAPTER VII CALCULATION OF SALES TAX PAYABLE

Calculation of Sales Tax Payable on a Taxable Transaction

18. (1) Subject to subsection (2), the sales tax payable on a taxable transaction is calculated by applying the relevant rate of sales tax prescribed by the Minister by notice in the Gazette to the taxable value of the transaction.

(2) The rate of sales tax imposed on an export of goods or services from Lesotho by a vendor (other than an unregistered vendor) is zero.

Calculation of Sales Tax Payable by a Vendor for a Tax Period

19. (1) The sales tax payable by a vendor for a tax period is calculated according to the following formula:

$$\mathbf{A-B}$$

where,

A is the total sales tax payable in respect of taxable supplies made by the vendor during the tax period; and

B is the total credit allowed to the vendor in the tax period under this Act.

(2) In the event of B exceeding A in subsection (1), a refund of sales tax is only

allowed pursuant to section 43.

Credit for Input Tax

20. (1) A credit is allowed to -

- (a) a taxable vendor for input tax paid in respect of-
 - (i) a taxable supply to, or an import by, the vendor of goods or services where, in the course or furtherance of an enterprise carried on by the vendor .
 - (A) in the case of goods, the vendor has acquired the goods for use in manufacturing or for re-supply in substantially the same state; or
 - (B) in the case of services, the vendor has acquired the services for use directly in manufacturing, and where these relate to installation, repair, or maintenance of capital goods;
 - (ii) where the vendor is a manufacturer, a taxable supply to, or an import by, the manufacturer of capital goods; or
- (b) a person on becoming registered under section 16 for input tax paid in respect of-
 - (i) goods on hand at the date of registration held for re-supply in substantially the same state in the course or furtherance of an enterprise carried on by the person; or
 - (ii) a supply to, or an import by, the person before the date of registration of goods or services used as raw materials in manufacturing goods supplied by the person after the date of registration.

(2) Where a supply to, or an import by, a person of goods or services is partly for a use set out in subsection (1) and partly for another use, the amount of the input tax allowed as a credit is that part of the input tax that relates to the use set out in subsection (1).

(3) An input tax credit allowed -

- (a) under subsection (1)(a) arises on the date the goods or services are supplied to, or imported by, the taxable vendor; or
- (b) under subsection (1)(b) arises on the date registration takes effect.

(4) Subject to subsection (5), an input tax credit allowed under subsection (1) may not be claimed until the tax period in which the vendor has -

- (a) a sales tax invoice; or
- (b) a bill of entry or other document prescribed under the Customs and Excise Act, 1982,

evidencing the amount of input tax paid.

(5) Where a vendor to whom subsection (1) applies does not have a sales tax invoice evidencing the input tax paid, the Commissioner may allow an input tax credit in the tax period in which the credit arises where the Commissioner is satisfied -

- (a) that the vendor took all reasonable steps to acquire a sales tax invoice;
- (b) that the failure to acquire a sales tax invoice was not the fault of the vendor; and
- (c) that the amount of input tax claimed by the vendor is correct.

Sales Tax Invoices

21 (1) A vendor making a taxable supply to a taxable vendor in the circumstances specified in section 20(1)(a) shall provide the taxable vendor, at the time of the supply, with an original sales tax invoice for the supply and one copy thereof

(2) The vendor making a supply referred to in subsection (1) shall retain one copy of the sales tax invoice for the supply.

(3) A taxable vendor who has not received a sales tax invoice as required by subsection (1) may request the vendor who has made the supply to provide a sales tax invoice in respect of the supply.

(4) A vendor to whom section 20(1)(b) applies (referred to as a “newly registered vendor”) may request a vendor, who has supplied goods or services to the newly registered vendor in the circumstances specified in section 20(1)(b), to provide a sales tax invoice in respect of the supply.

(5) A request for a sales tax invoice -

(a) under subsection (3), shall be made within sixty days after the date of the supply;
or

(b) under subsection (4), shall be made within sixty days of the date of registration.

(6) A vendor who receives a request under subsection (3) or (4) shall comply with the request within fourteen days after receiving that request.

(7) A sales tax invoice shall not be provided to a person in circumstances other than those specified in subsection (1) or (6).

(8) A sales tax invoice is an invoice containing the particulars specified in Schedule III.

Credit and Debit Notes

22. (1) Where a sales tax invoice has been issued⁴ in the circumstances specified in section 14(1)(e) and the amount shown in that sales tax invoice as sales tax charged for the supply exceeds the sales tax properly chargeable for the supply, the vendor making the supply shall provide the recipient of the supply with a credit note containing the particulars in Schedule III.

(2) Where a sales tax invoice has been issued in the circumstances specified in section 14(1

)e) and the sales tax properly chargeable for the supply exceeds the amount shown in that invoice as sales tax charged for the supply, the vendor making the supply shall provide the recipient of the supply with a debit note containing the particulars specified in Schedule III.

Bad Debts

23. (1) A credit is allowed for the sales tax paid by a vendor in respect of a taxable supply where the whole or part of the consideration for the supply is subsequently treated as a bad debt.

(2) The amount of the credit allowed under subsection (1) is the amount of the sales tax paid in respect of the supply which corresponds to the amount of the debt treated as bad.

(3) The credit arises on the later of-

(a) the date on which the bad debt was written off in the accounts of the vendor; or

(b) twelve months after the end of the tax period in which the sales tax was paid in respect of the supply.

(4) Where any amount in respect of which a credit has been allowed in accordance with subsection (1) is at any time wholly or partly recovered by the vendor, the vendor is treated as having charged sales tax in respect of a taxable supply in Lesotho made during the tax period in which the bad debt is wholly or partly recovered, being an amount of sales tax calculated according to the following formula .

$$A \times B/C$$

where,

A is the amount allowed as a credit under subsection (1);

B is the amount of the bad debt recovered; and

C is the amount of the bad debt written off.

CHAPTER VIII PROCEDURE AND ADMINISTRATION

PART I RETURNS AND ASSESSMENTS

Returns

24. (1) A vendor shall file a sales tax return for each tax period with the Commissioner within twenty days after the end of the period.

- (2) A sales tax return shall be in the form prescribed by the Commissioner and state the sales tax payable by the vendor for the tax period to which it relates.
- (3) In addition to any return required under subsection (1), the Commissioner may require any person, whether or not a vendor, to file with the Commissioner (whether on that person's behalf or as agent or trustee of another person) such further or other return, in the prescribed form, as and when required by the Commissioner for the purposes of this Act.
- (4) Upon application in writing by a vendor, the Commissioner may, where good cause is shown by the vendor, extend the period in which a sales tax return is to be filed.

Assessments

25. (1) Where-

- (a) a person fails to file a return as required by section 24;
- (b) the Commissioner is not satisfied with a return filed by a person; or
- (c) the Commissioner has reasonable grounds to believe that a person will become liable to pay sales tax under this Act but is unlikely to pay the amount due,

the Commissioner may make an assessment of the amount of sales tax payable by the person.

(2) An assessment under subsection (1)(b) -

- (a) where fraud, or gross or wilful neglect has been committed by, or on behalf of the person, may be made at any time; or
- (b) in any other case, shall be made within four years after the date the return was filed by the person.

(3) The Commissioner may, based on the information available, estimate the sales tax payable by a person for the purposes of making an assessment under subsection (1).

(4) Where an assessment has been made under this section, the Commissioner shall serve notice of the assessment on the vendor, which notice shall state -

- (a) the sales tax payable;
- (b) the date the sales tax is due and payable; and
- (c) the time, place, and manner of objecting to the assessment.

(5) The Commissioner may, within the time limits set out in subsection (6), amend an assessment by making such alterations or additions to the assessment as the Commissioner considers necessary, and the Commissioner shall serve notice of the amended assessment on the person assessed.

(6) The time limits for amending an assessment are -

- (a) where fraud, or gross or wilful neglect has been committed by, or on

behalf of the person assessed in respect of the period of assessment, the assessment may be amended at any time; or

(b) in any other case, the assessment may be amended within four years after service of the notice of assessment.

(7) An amended assessment is treated in all respects as an assessment under this Act.

Deemed assessments

26. (1) Where a person has filed a sales tax return for a tax period, the Commissioner is deemed to have made an assessment of the sales tax payable by the person for that tax period, being the amount so specified in the return.

(2) Where an importer has paid sales tax pursuant to section 34(1)(c) in respect of the import of goods or services, the Commissioner is deemed to have made an assessment of the sales tax payable by the importer in respect of the import, being the amount of sales tax so paid.

(3) A deemed assessment under subsection (1) is treated as served on the person assessed on the due date for filing of the sales tax return, or the actual date the return is filed, whichever is the later; and a deemed assessment under subsection (2) is treated as served on the importer on the due date for payment of the sales tax, or the actual date the sales tax is paid, whichever is the later.

(4) A vendor or importer may, within four years after service of the deemed notice of assessment, apply to the Commissioner for an amendment of the assessment.

(5) An application under subsection (4) shall be in writing and specify in detail the grounds upon which it is made; and after considering the application, the Commissioner may amend the assessment or disallow the application.

(6) The Commissioner shall serve the vendor or importer with a notice in writing of the decision on the application for amendment of an assessment.

(7) If the Commissioner has not made a decision under subsection (5) within sixty days of the application being filed, the Commissioner is deemed to have made a decision to disallow the amendment and to have served notice of the decision on that day.

(8) For all purposes of this Act -

- (a) an application under subsection (4) is treated as an objection; and
- (b) the Commissioner's decision under subsection (5) or deemed decision under subsection (7) is treated as an objection decision.

General Provisions Relating to Assessments

27. (1) The production of a notice of assessment or a certified copy of a notice of assessment is receivable in any proceedings as conclusive evidence of the due making of the assessment and, except in proceedings under Part II of Chapter VIII relating to the assessment, that the amount and all particulars of the assessment are correct.

(2) No assessment or other document purporting to be made, issued, or executed under this Act shall -

- (a) be quashed or deemed to be void or voidable for want of form; or
- (b) be affected by reason of mistake, defect, or omission therein,

if it is, in substance and effect, in conformity with this Act and the person assessed, or intended to be assessed or affected by the document is designated in it according to common understanding.

PART II OBJECTIONS AND APPEALS

Interpretation

28. In this Part, “Tribunal” means the Administrative Tribunal for Tax Appeals established under section 203 of the Income Tax Act, 1993.

Objection to Assessment

29. (1) A person who is dissatisfied with an assessment may file an objection to the assessment with the Commissioner within thirty days after the service of the notice of assessment.

(2) An objection shall be in writing and specify in detail the grounds upon which it is made.

(3) After considering the objection, the Commissioner may allow the objection in whole or part and amend the assessment accordingly, or disallow the objection.

(4) The Commissioner shall serve the person objecting with notice in writing of the objection decision.

(5) If the Commissioner has not made an objection decision within sixty days of the objection being filed, the Commissioner is deemed to have made a decision to disallow the objection and to have served the person objecting with notice of the decision on that day.

Appeal to Tribunal

30. (1) The Tribunal shall hear and consider appeals from persons with respect to objection decisions.

(2) A person dissatisfied with an objection decision may, within thirty days after being served with notice of the objection decision, file a notice of appeal with the Tribunal and shall serve a copy of the notice of appeal on the Commissioner.

(3) In an appeal to the Tribunal against an objection decision, the person appealing is limited to the grounds set out in the person’s objection, unless the Tribunal grants the person leave to add new grounds.

(4) In deciding an appeal, the Tribunal may make an order -

- (a) affirming, reducing, increasing, or varying the assessment under appeal; or

- (b) remitting the assessment for reconsideration by the Commissioner in accordance with the directions or recommendations of the tribunal

(5) No member of the Tribunal shall be an officer of the Department of Sales Tax.

(6) A member assigned under section 206(2) of the Income Tax Act, 1993 to hear an appeal under this section shall have significant experience in sales tax matters.

Appeal to High Court of Lesotho

31. (1) A party to a proceeding before the Tribunal who is dissatisfied with the decision of the Tribunal may, within thirty days after being notified of the decision, file a notice of appeal with the Registrar of the High Court; and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceeding before the tribunal

(2) An appeal to the High Court may be made on questions of law only, and the notice of appeal shall state the question or questions of law that will be raised on the appeal.

Appeal to Court of Appeal

32. (1) A party to a proceeding before the High Court may, with special leave of the Court of Appeal, appeal the decision of the High Co to the Court of Appeal

(2) Notice of an appeal under subsection (1) shall be filed with the Registrar of the Court of Appeal by the party appealing within thirty days of being notified of the decision of the High Court; and that party shall serve a copy of the notice of appeal on the other party to the proceeding before the High Court.

Burden of Proof

33. The burden of proving that an assessment is excessive is on the person assessed.

PART III COLLECTION AND RECOVERY

Due Date for Payment of Sales Tax

34. (1) Sales tax payable under this Act is due and payable -

- (a) in the case of a taxable supply by a vendor in respect of a tax period, on the date the return for the tax period is to be filed;
- (b) in the case of an assessment issued under this Act, on the date specified in the notice of assessment; or
- (c) in any other case, on the date the taxable transaction occurs as determined under this Act.

(2) The sales tax payable by a vendor under subsection (1)(a) is determined in accordance with Chapter VII of this Act.

(3) Where an objection to, or notice of appeal against, an assessment has been filed, the sales tax payable under the assessment is due and payable, and may be recovered, notwithstanding that objection or appeal

(4) Upon written application by a person liable for sales tax, the Commissioner may, where good cause is shown, extend the time for payment of the tax beyond the date on which it is due and payable under this section, or make such other arrangements as appropriate to ensure payment of the sales tax due.

(5) If a person liable for sales tax fails to pay the tax by the due date, the Director of Immigration shall, on the written direction of the Commissioner, prevent the person from leaving Lesotho until the person makes -

- (a) payment in full; or
- (b) an arrangement satisfactory to the Commissioner for the payment of the tax.

(6) A letter by the Commissioner to the Director of Immigration that sales tax is due and payable by the person referred to in subsection (5) is sufficient authority for the Director of Immigration to act in pursuance of that subsection.

Sales Tax as a Debt Due to the Lesotho Government

35. (1) Sales tax due and payable under this Act is a debt due to the Government of Lesotho and is payable to the Commissioner by the person liable for the tax as determined under the Act.

(2) The Commissioner, the Director of Customs and Excise, and the Director of Postal Services may make such arrangements as they consider appropriate to facilitate the collection of sales tax on the import of goods.

(3) If a person fails to pay sales tax when it is due and payable, the Commissioner may file, with the clerk of a court of competent jurisdiction, a statement certified by the Commissioner setting forth the amount of the sales tax due, and that statement is treated for all purposes as a civil judgment lawfully given in that court in favour of the Commissioner for a debt in the amount set forth.

(4) The statement referred to in subsection (3) may be filed with the Subordinate Court having jurisdiction over the person, notwithstanding any provision of the Subordinate Courts Order, 1988 to the contrary.

Security

36. (1) Where it appears to the Commissioner as necessary to do so for the protection of the revenue, the Commissioner may require any person, as a condition of the person making a taxable supply or import, to give security of such amount and in such manner as the Commissioner may determine for the payment of sales tax which is or may become due by the person.

(2) Where any security is required to be given under this Act, the security may be given by bond, cash, or both bond and cash and is subject to such conditions as the Commissioner may reasonably require.

(3) Security payable under this Act shall, for all purposes of this Act, be treated as sales tax and may be assessed by the Commissioner in the same manner as any other sales tax payable under this Act and an assessment under this subsection shall, for all purposes, be treated as an assessment under this Act.

Preferential Claim to Assets

37. From the date on which sales tax becomes due and payable, the Commissioner has a preferential claim, as provided in the Insolvency Proclamation, 1957, upon the assets of the person liable to pay the tax until the tax is paid.

Seizure of Goods

38. (1) The Commissioner may seize any goods in respect of which the Commissioner has reasonable grounds to believe that sales tax that is, or will become, due and payable in respect of the supply or import of those goods has not been, or will not be, paid.

(2) The Commissioner may seize any vehicle used in the removal or carriage of goods liable to be seized under subsection (1) unless it is shown that such vehicle was so used without the consent or knowledge of the owner of that vehicle or other person lawfully in possession or charge thereof, and at the discretion of the Commissioner, the vehicle may be sold by public auction or may be dealt with in such other manner as the Commissioner may direct.

(3) Goods that have been seized under this section shall be stored in a place approved by the Commissioner for the storage of such goods.

(4) Where goods have been seized under subsection (1), the Commissioner shall, as soon as practicable after the seizure, serve on the owner of, the goods or the person who had custody or control of the goods immediately before seizure, a notice in writing -

- (a) identifying the goods;
- (b) stating that the goods have been seized under this section and the reason for seizure; and
- (c) setting out the terms of subsections (7), (8), and (9).

(5) The Commissioner is not required to serve a notice under subsection (4) if after making reasonable enquiries, the Commissioner does not have sufficient information to identify the person on whom the notice should be served.

(6) Where subsection (5) applies, the Commissioner may serve a notice under subsection (4) on a person claiming the goods, provided the person has given the Commissioner sufficient information to enable such a notice to be served.

(7) The Commissioner may authorise any goods seized under subsection (1) to be delivered to the person on whom a notice under subsection (4) has been served where that person has paid, or gives security (in accordance with section 36) for the payment of, the sales tax that is, or will become, due and payable in respect of the supply or import of the goods.

(8) Where subsection (7) does not apply, the Commissioner shall detain the goods seized under subsection (1) -

- (a) in the case of perishable goods, for such period

as the Commissioner considers reasonable having regard to the condition of the goods; or

- (b) in any other case, until the later of-
 - (i) twenty-one days after the seizure of the goods; or
 - (ii) twenty-one days after the due date for payment of the sales tax on the supply or import of the goods.

(9) Where the detention period in subsection (8) has expired, the Commissioner may sell the goods in the manner specified in section 39(4) and apply the proceeds of sale as set out in section 39(5).

(10) Nothing in this section precludes the Commissioner from proceeding under section 35 with respect to any balance owed if the proceeds of disposal are not sufficient to meet the costs of disposal and the sales tax due.

Distress Proceedings

39. (1) The Commissioner may recover unpaid sales tax by distress proceedings against the movable property of the person liable to pay sales tax (the “person liable”) by issuing an order in writing, specifying the person against whose property the proceedings are authorised, the location of the property, and the sales tax liability to which the proceedings relate; and may require a police officer to be present while the distress is being executed.

(2) For the purposes of executing distress under subsection (1), the Commissioner may, at any time, enter any house or premises described in the order authorising the distress proceeding.

(3) Property upon which a distress is levied under this section (other than perishable goods) shall be kept for twenty-one days either at the premises where the distress was levied or at such other place as the Commissioner may consider appropriate, at the cost of the person liable.

(4) Where the person liable does not pay the tax due, together with the costs of the distress -

- (a) in the case of perishable goods, immediately after the distress is levied; or
- (b) in any other case, within twenty-one days after the distress is levied,

the property distrained upon may be sold by public auction, or in such other manner as the Commissioner may direct.

(5) The proceeds of a disposal under subsection (4) shall be applied by the auctioneer or seller -

- (a) first towards the cost of taking, keeping, and selling the property distrained upon;
- (b) then towards the outstanding liability under this Act of the person liable;

- (c) then towards any outstanding liability under the *Income Tax Act, 1993* of the liable; and
- (d) refund the remainder of the proceeds, if any, to the person liable.

(6) Nothing in this section precludes the Commissioner from proceeding under section 35 with respect to any balance owed if the proceeds of the distress are not sufficient to meet the costs thereof and the sales tax due.

(7) All costs incurred by the Commissioner in respect of any distress may be recovered by the Commissioner from the person liable and such costs shall be treated as sales tax and may be assessed by the Commissioner in the same manner as any other sales tax payable under this Act and an assessment under this subsection shall, for all purposes, be treated as an assessment under this Act.

Recovery of Sales Tax from Recipient of the Supply

40. (1) Where, in respect of a taxable supply by a vendor, the vendor has, in consequence of a fraudulent action or misrepresentation by the recipient of the supply (the “recipient”), incorrectly treated the supply as exempt from sales tax, the Commissioner may raise an assessment upon the recipient for the amount of sales tax payable together with any additional tax that has become payable under section 52.

(2) The Commissioner shall serve notice of an assessment under subsection (1) on the recipient specifying -

- (a) the sales tax payable,
- (b) the date the sales tax is due and payable; and
- (c) the time, place, and manner of objecting to the assessment.

(3) An assessment raised under subsection (1) is treated as an assessment for all purposes of this Act.

(4) Subsection (1) does not preclude the Commissioner from recovering the sales tax and additional tax from the vendor and -

- (a) any amount recovered from the recipient is to be credited against the liability of the vendor; and
- (b) any amount recovered from the vendor is to be credited against the liability of the recipient.

(5) Where an amount of sales tax and additional tax referred to in subsection (1) is paid by the vendor, the vendor may recover the amount paid from the recipient.

Recovery of Tax from Third Parties

41. (1) Where a person liable to pay sales tax (the “person liable”) fails to pay the tax on the date on which it is due and payable, the Commissioner may, by notice in writing, require a person -

- (a) owing or who may owe money to the person liable;

- (b) holding or who may subsequently hold money for, or on account of the person liable; or
- (c) having authority from some other person to pay money to the person liable,

to pay the money to the Commissioner on the date set out in the notice, up to the amount of the sales tax due.

(2) The date specified in the notice under subsection (1) shall not be a date before the money becomes due to the person liable, or held on that person's behalf.

(3) A copy of a notice issued under subsection (1) shall be forwarded by the Commissioner to the person liable.

(4) A person making a payment pursuant to a notice under subsection (1) is deemed to have been acting under the authority of the person liable and of all other persons concerned and is hereby indemnified in respect of the payment.

Duties of Receivers

42. (1) In this section "receiver" means a person who, with respect to an asset in Lesotho, is -

- (a) a liquidator of a company;
- (b) a receiver appointed out of court or by a court;
- (c) a trustee for an unrehabilitated insolvent;
- (d) a mortgagee in possession;
- (e) an executor of a deceased estate; or
- (f) any other person conducting the business of a person legally incapacitated.

(2) A receiver shall notify the Commissioner in writing within fourteen days after being appointed as receiver or of taking possession of an asset in Lesotho, whichever first occurs.

(3) The Commissioner may in writing notify a receiver of the amount which appears to the Commissioner to be sufficient to provide for any sales tax which is or will become payable by the person whose assets are in the possession of the receiver.

(4) A receiver shall not part with any asset in Lesotho which is held by the receiver in his or her capacity as receiver without the prior written permission of the Commissioner.

(5) A receiver-

- (a) shall set aside, out of the proceeds of sale of an asset, the amount notified by the Commissioner under subsection (3), or such lesser amount as is subsequently agreed on by the Commissioner;
- (b) is liable to the extent of the amount set aside for the sales tax of the person who

- owned the asset; and
- (c) may pay any debt that has priority over the sales tax referred to in this section notwithstanding any provision of this section.
- (6) A receiver is personally liable to the extent of any amount required to be set aside under sub section (5) for the sales tax referred to in subsection (3) and to the extent that, the receiver fails to comply with the requirements of this section.

PART IV REFUND OF SALES TAX

Refund of Overpaid Sales Tax

43. (1) Subject to subsection (3), a person may apply to the Commissioner for a refund of any sales tax paid in excess of the amount due under this Act.

(2) Where the Commissioner is satisfied that sales tax has been overpaid, and that the person applying for the refund has repaid the overpaid sales tax to the recipient of the supply to which the application for a refund relates either in cash or as a credit against any amount owing by that recipient, the Commissioner shall -

- (a) apply the amount of tax overpaid against any outstanding liability of the person under this Act;
- (b) apply the balance of the tax overpaid against any outstanding liability of the person under the Income Tax Act, 1993; and
- (c) refund the remainder to the person applying under subsection (1).

(3) Subject to subsection (5), if, for any tax period, the total credit allowed to a vendor under this Act exceeds the vendor's liability for sales tax for that period -

- (a) the excess is credited against any outstanding liability of the vendor under this Act; and
- (b) the remainder of the excess is treated as a credit arising in the next tax period.

(4) Where a credit has been carried forward under subsection (3)(b) for a period of six months, the vendor may apply under subsection (1) for a refund of the amount represented by the credit.

(5) Subsection (3)(b) does not apply where the Commissioner is satisfied that the excess is due to excess input tax credits which are a regular feature of the area of business activity in which the person is engaged and the person may apply under subsection (1) for a refund of the amount represented by the credit.

(6) An application for a refund under this section shall be made to the Commissioner in writing -

- (a) in the case of an application under subsection (4), within twenty days after the end of the sixth month; or
- (b) in any other case, within four years after the tax is due and payable under section 34.

(7) The Commissioner shall serve on a person applying for a refund a notice in writing of a decision in respect of the application.

(8) A person dissatisfied with a decision referred to in subsection (7) may only challenge the decision under Part II of Chapter VIII of this Act on the basis that the decision is an assessment.

Refund of Sales Tax to Diplomats, Diplomatic and Consular Missions, Public International Organisations, Contractors and Charitable Organisations

44. (1) In this section,

“aid project” means a project for the benefit of Lesotho provided for in an international agreement and which is financed by way of grant by a public international organisation or foreign government;

“charitable activities” means activities consisting of the provision of food, meals, board, lodging, clothing or other necessities, comforts or amenities to any persons whom the Commissioner is satisfied to be in need;

“contractor” means a person engaged by the Lesotho Government, a public international organisation, or a foreign government to provide construction, transportation, or any other service prescribed by regulations;

“Lesotho Government” does not include a statutory corporation or any other body in which the Government or a statutory corporation has a controlling interest; and

“permanent resident” means a person who is not a citizen of Lesotho but who has been resident in Lesotho for a period or periods in total of seven years or more.

(2) The Minister may authorise the granting of a refund in respect of sales tax paid or borne by -

- (a) any person enjoying full or limited immunity, rights or privileges under the Diplomatic Privileges Act or under recognised principles of international law;
- (b) any diplomatic or consular mission of a foreign country established in Lesotho, relating to transactions concluded for the official purposes of such mission;
- (c) a public international organisation or foreign government in accordance with an international agreement;
- (d) a contractor under an aid project; or
- (e) an organisation of a public character and permanent nature where the goods or services are supplied by the organisation in the course of providing charitable activities.

(3) No refund is available under subsection (2)(a)-(c) to any citizen or permanent resident of Lesotho.

(4) The Minister may authorise any relief under this section on such conditions and subject to such restrictions as the Minister may deem fit.

(5) Any claim for a refund of tax under this section is to be made in such form and at such

time as the Commissioner may prescribe and shall be accompanied by proof of payment of tax or such certification as the Commissioner may require.

PART V RECORDS AND INVESTIGATION POWERS

Accounts and Records

45. (1) A person liable for sales tax under this Act shall maintain in Lesotho in the Sesotho or English languages -

- (a) original sales tax invoices, credit notes, and debit notes received by the person;
- (b) a copy of all sales tax invoices, credit notes, and debit notes issued by the person;
- (c) customs documentation relating to imports and exports by the person; and
- (d) such other accounts and records as may be prescribed by the Commissioner.

(2) Records required to be maintained under subsection (1) shall be retained for as long as they remain material in the administration of this Act.

Access to Books, Records and Computers

46. (1) In order to enforce a provision of this Act, the Commissioner, or an officer authorised in writing by the Commissioner -

- (a) shall have at all times and without any prior notice to any person full and free access to any premises place, book, record, or computer;
- (b) may make an extract or copy from any book, record, or computer-stored information to which access is obtained under paragraph (a);
- (c) may seize any book or record that, in the opinion of the Commissioner or authorised officer, affords evidence that may be material in determining the liability of any person under this Act;
- (d) may retain any such book or record for as long as ~ required for determining a person's liability or for any proceeding under this Act;
- (e) may, where a hard copy or computer disk of information stored on a computer is not provided, seize and retain the computer for as long as necessary to copy the information required; and
- (f) (i) may station, on the premises to which access is gained under paragraph (a), an officer to collect data on a vendor's supply of goods and services in order to ascertain the tax payable; and
(ii) the officer shall fill in the data on a form prescribed by the Commissioner.

(2) An officer who attempts to exercise a power under(1) on behalf of the Commissioner is not entitled to enter or any premises or at any place if, upon being requested by the

occupier of the premises or place, the officer does not produce an authorisation in writing from the Commissioner to the effect that the officer is authorised to exercise that power under this section.

(3) The owner, manager, or any other person on the premises or at the place entered or proposed to be entered under this section shall provide all reasonable facilities and assistance for the effective exercise of power under this section.

(4) A person whose books, records, or computer have been removed and retained under subsection (1) may examine them and make copies or extracts from them during regular office hours under such supervision as the Commissioner may determine.

Notice to Obtain Information or Evidence

47. (1) The Commissioner may, by notice in writing, require a person, whether or not liable for sales tax under this Act .

(a) to furnish such information as may be required by the notice; or

(b) to attend at the time and place designated in the notice for the purpose of being examined on oath before the Commissioner or an officer authorised by the Commissioner for this purpose concerning the sales tax affairs of that person or any other person, and for that purpose the Commissioner or an authorised officer may require the person examined to produce any book, record, or computer-stored information in the control of the person.

(2) Where the notice requires the production of a book or record, it is sufficient if such book or record is described in the notice with reasonable certainty.

(3) A notice issued under this section shall be served by or at the direction of the Commissioner by a signed copy delivered by hand to the person to whom it is directed, or left at the person's last and usual place abode, and the certificate of service signed by the person serving the notice is evidence of the facts stated therein.

Books and Records not in Sesotho or English Language

48. Where any book or record referred to in section 46 or 47 is not the Sesotho or English language, the Commissioner may, by notice writing, require the person keeping the book or record to provide at that person's expense a translation into the Sesotho or English language by a translator approved by the Commissioner for this purpose.

PART VI TAXPAYER IDENTIFICATION NUMBER

Taxpayer Identification Number

49. The Commissioner may require a person to include the taxpayer identification number issued by the Commissioner to that person in any return, notice, or other document used for the purposes of this Act.

PART VII

ADDITIONAL TAX AND OFFENCES

Division I: Additional Tax

Additional Tax for Failure to Apply for Registration

50. A person who fails to apply for registration as required by section 16(1) or section 16(5) is liable for additional tax equal to double the amount of sales tax payable during the period commencing on the day on which the person was required to apply for registration under section 16(1) or section 16(5) until either the person files an application for registration with the Commissioner or the Commissioner registers the person under section 16(9).

Additional Tax for Failure to File a Return

51. A person who fails to file a return within the time required under this Act is liable for additional tax on the sales tax payable for the period of the return at the rate of 3% per month or part of the month the return is outstanding.

Additional Tax for Failure to Pay Sales Tax When Due

52. (1) A person who fails to pay sales tax imposed by this Act on or before the due date is liable for additional tax on the unpaid sales tax at the rate of 3% per month or part of the month the sales tax is outstanding.

(2) If a person pays additional tax under subsection (1) and the sales tax to which it relates is found not to have been due and payable by the person and is refunded, then the additional tax, or that much of the additional tax as relates to the amount of the refund, shall also be refunded to that person.

Additional Tax in Relation to Records

53. A person who fails to maintain proper records in a tax period in accordance with the requirements of this Act is liable for additional tax equal to double the amount of sales tax payable by the person for the tax period.

Additional Tax in Relation to False or Misleading Statements

54. (1) Where a person knowingly or recklessly

- (a) makes a statement to a taxation officer that is false or misleading in a material particular; or
- (b) omits from a statement made to a taxation office any matter or thing without which the statement is misleading in a material particular, and the sales tax properly payable by the person exceeds the tax that would have been payable if the person was assessed on the basis that the statements was not false or misleading, the person is liable for additional tax equal double the amount of the excess.

(2) Section 67(3) applies in determining whether a person has made a statement to a taxation officer.

Recovery of Additional Tax

55. (1) Where good cause is shown, in writing, by the person liable for additional tax, the Commissioner may remit in whole or part any additional tax payable.

(2) Subject to subsection (3), the imposition of additional tax is in addition to any penalty imposed as a result of a conviction for an offence under Division II.

(3) No additional tax is payable under section 50, 53, or 54 where the person has been convicted of an offence under section 56, 61, 61.01, or 67 in respect of the same act or omission.

(4) If additional tax under section 50, 53, or 54 has been paid and the Commissioner institutes a prosecution proceeding under section 56, 61, or 67 in respect of the same act or omission, the Commissioner shall refund the amount of additional tax paid; and that additional tax is not payable unless the prosecution is withdrawn.

(5) Additional tax shall for all purposes of this Act be treated as sales tax of the same nature as the sales tax to which it relates and shall be payable in and for the same tax period as that sales tax.

(5) Additional tax shall be assessed by the Commissioner in the same manner as the sales tax to which it relates and an assessment of additional tax shall be treated for all purposes as an assessment under this Act.

Division II: Offences

Offences Related to Registration

56. A person who fails -

- (a) to apply for registration as required by section 16(1) or 16(5);
- (b) to notify the Commissioner of a change in circumstances as required by section 16(15); or
- (c) to apply for cancellation of registration as required by section 17(1),

commits an offence and is liable on conviction to -

- (d) where the failure is deliberate or reckless, a fine not exceeding M10,000 or to imprisonment for a term not exceeding 6 years, or both; or
- (e) in any other case, a fine not exceeding M5,000 or to imprisonment for a term not exceeding 3 years or both.

Offences Related to Sales Tax Invoices, Credit Notes and Debit Notes

57. (1) A vendor who fails to provide a sales tax invoice as required by Section 21(1) or section 21(6), or a credit or debit note as required by Section 22 commits an offence and is liable on conviction to a fine not exceeding M5,000 or to imprisonment for a term not exceeding 3 years, or both.

(2) A person who provides a sales tax invoice otherwise than as provided for in Section 21(1) or Section 21(6), or a credit or debit note otherwise than as provided for in Section 22 commits an offence and is liable on conviction to -

- (a) where the provision of the sales tax invoice, credit note, or debit note otherwise than as required is deliberate or reckless, a fine not exceeding M10,000 or to imprisonment for a term not exceeding 6 years or both; or

- (b) in any other case, a fine not exceeding M5,000 or to imprisonment for a term not exceeding 3 years, or both.

Failure to File a Return

58. (1) A person who fails to file a return or any other document as required by this Act commits an offence and is liable on conviction to a fine not exceeding M5,000 or to imprisonment for a term not exceeding 3 years or both.

(2) If a person convicted of an offence under subsection (1) fails to file the return or document within the period specified by the Commissioner, that person commits an offence and is liable on conviction to a fine not exceeding M1,000 for each day during which the failure continues and to imprisonment for three months without the option of a fine in lieu of imprisonment.

Failure to Give Security

59. A person who, without any reasonable cause, fails to give security as required by Section 36 commits an offence and is liable on conviction to a fine not exceeding M10,000 or to imprisonment for a term not exceeding 6 years, or both.

Failure to Comply with Recovery Provisions

60. (1) A person who fails to comply with .

- (a) a notice under Section 41; or
- (b) the requirements of Section 42,

commits an offence and is liable on conviction to a fine not exceeding M10,000 or to imprisonment for a term not exceeding 6 years, or both.

(2) Where a person is convicted of an offence under subsection (1) (a), the Court may, in addition to imposing a penalty, order the convicted person to pay to the Commissioner an amount not exceeding the amount which the person failed to pay as required by section 41.

Failure to Maintain Proper Records

61. A person who fails to maintain proper records in accordance with the requirements of this Act commits an offence and is liable on conviction to .

- (a) where the failure was deliberate or reckless, a fine not exceeding M10,000 or to imprisonment for a term not exceeding 6 years, or both; or
- (b) in any other case, a fine not exceeding M5,000 or to imprisonment for a term not exceeding 3 years, or both.

Failure to Provide Reasonable Assistance

62. A person who fails to provide the Commissioner or an authorised officer with all reasonable facilities and assistance as required by Section 46 (3) commits an offence and is liable on conviction to a fine not exceeding M5,000 or to imprisonment for a term not

exceeding 3 years, or both.

Failure to Comply with a Section 47 Notice

63. A person who fails to comply with a notice issued under Section 47 commits an offence and is liable on conviction to a fine not exceeding M5,000 or to imprisonment for a term not exceeding 3 years, or both.

Improper Use of Taxpayer Identification Number

64. (1) A person who knowingly uses a false taxpayer identification number (including the taxpayer identification number of another person) on a return or document prescribed or used for the purposes of this Act commits an offence and is liable on conviction to a fine not exceeding M10,000 or to imprisonment for a term not exceeding 6 years, or both.

(2) Subsection (1) does not apply to a person who has used the taxpayer identification number of another person with the permission of that other person on a document relating to the sales tax affairs of that other person.

Failure to Maintain Secrecy

65. A Person who contravenes Section 72 commits an offence and is liable on conviction to a fine not exceeding M20,000 or to imprisonment for a term not exceeding 12 years, or both.

Breach of Section 81

66. A person who contravenes Section 81(1) commits an offence and is liable on conviction to a fine not exceeding M5,000 or to imprisonment for a term not exceeding 3 years, or both.

False or Misleading Statements

67. (1) A person who

- (a) makes a statement to a taxation officer that is false or misleading in a material particular; or
- (b) omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular,

commits an offence and is liable on conviction to -

- (c) where the statement or omission was made knowingly or recklessly, a fine not exceeding M10,000 or to imprisonment for a term not exceeding 6 years, or both; or
- (d) in any other case, a fine not exceeding M5,000 or to imprisonment for a term not exceeding 3 years or both.

(2) It is a defence to a prosecution under subsection (1) if it is proved that the person did not know and could not reasonably be expected to have known that the statement to which the prosecution relates was false or misleading.

(3) A reference in this Section to a statement made to a taxation officer is a reference to a statement made orally, in writing, or in any other form to that officer acting in the performance of his or her duties under this Act, and includes a statement made

- (a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, or furnished under this Act;
- (b) in information required to be furnished under this Act;
- (c) in a document furnished to a taxation officer otherwise than pursuant to this Act;
- (d) in answer to a question asked of a person by a taxation officer; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to a taxation officer.

Obstructing Taxation Officers

68. A person who obstructs the Commissioner or an authorised officer in the performance of his or her duties under this Act commits an offence and is liable on conviction to a fine not exceeding M10,000 or to imprisonment for a term not exceeding 6 years, or both

Offences by Companies

69. (1) Where an offence under this Division has been committed by a company, every person who at the time of the commission of the offence -

(a) was a nominated person, director, general manager, secretary, member of the committee of management, or other similar officer of the company; or

(b) was acting or purporting to act in such capacity, is deemed to have committed the offence.

(2) Subsection (1) does not apply where -

(a) the offence was committed without such person's consent or knowledge; and

(b) the person exercised all such diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and all the circumstances.

PART VIII ADMINISTRATION

Division I: Office of the Commissioner of Sales Tax

Appointment of Commissioner and Deputy Commissioner of Sales Tax

70. (1) The offices of Commissioner of Sales Tax and Deputy Commissioner of Sales Tax shall be offices in the Public Service and their appointments shall be in accordance with the provisions of the constitution.

(2) The Commissioner has the general administration of this Act.

(3) The Deputy Commissioner shall perform, under the direction of the Commissioner, such general official duties as is required to be performed by this Act or by the Commissioner; and shall, in the case of illness, absence, or temporary incapacity of the Commissioner, act in the office of the Commissioner.

(4) A notice in the Gazette that a person has been appointed to hold an office under subsection (1) is conclusive evidence of that appointment.

Delegation

71. The Commissioner may delegate to any officer of the Department of Sales Tax any power or duty conferred or imposed on the Commissioner by this Act, other than this power of delegation.

Secrecy

72. (1) Subject to subsections (3) and (4), a person appointed under or employed in the carrying out of this Act, shall preserve secrecy with regard to all information or documents which may come to his or her knowledge in an official capacity in the performance of duties under this Act, and shall not communicate such information or the contents of such documents to any other person except in the performance of his or her duties under this Act or by order of a competent court.

(2) A person appointed to audit the assessments and accounts of the Commissioner, is, for the purposes of this section, deemed to be considered to be a person employed in carrying out the provisions of this Act.

(3) Subsection (1) does not prohibit the disclosure of information or documents to -

- (a) the Minister **or any other person where that** disclosure is necessary for the purposes of this Act or any other law;
- (b) to the Auditor-General or a person authorised by the Auditor-General; or
- (c) to an authorised officer of the government of a country with which an agreement for the avoidance of double taxation exists, to the extent permitted under that agreement.

(4) The information obtained by the Commissioner in the performance of the Commissioner's duties under this Act may be used by the Commissioner for the purposes of

any other fiscal law administered by the Commissioner or under which the Commissioner is appointed collector of tax.

(5) No officer or employee of the Department of Sales Tax may assume his or her duties unless he or she has first taken and subscribed before a Commissioner of Oaths the prescribed oath of secrecy.

Division II: Forms and Notices

Forms and Notices; Authentication of Documents

73. (1) Forms, notices, returns, statements, tables, and other documents prescribed or published by the Commissioner may be in such form as the Commissioner determines for the efficient administration of this Act and publication of such documents in the Gazette is not required.

(2) The Commissioner shall make the documents referred to in subsection (1) available to the public at the Sales Tax Office and at any other locations, or by mail, as the Commissioner determines.

(3) A notice or other document issued, served, or given by the Commissioner under this Act is sufficiently authenticated if the name or title of the Commissioner, or authorised officer, is printed, stamped, or written on the document.

Service of Notices and Other Documents

74. Unless otherwise provided in this Act, a notice or other document required or authorised by this Act to be served -

- (a) on a person being an individual other than in a representative capacity, is considered sufficiently served if-
 - (i) personally served on that person;
 - (ii) left at the person's usual or last known place of abode, office, or place of business in Lesotho; or
 - (iii) sent by registered post to such place of abode, office, or place of business, or to the person's usual or last known address in Lesotho; or
- (b) on any other person, is considered sufficiently served if-
 - (i) personally served on the nominated person;
 - (ii) left at the registered office of the person or the person's address for service of notices under this Act; or
 - (iii) where there is no such office or address, if it is left at or sent by registered post to any office or place of business of the person in Lesotho.

Division III: Nominated Person

Nominated Person

75. (1) Every vendor being a partnership, trust, company, non resident individual, or resident individual who is outside Lesotho for more than one tax period shall have a nominated person for sales tax purposes who is a resident individual.

(2) The name of the nominated person shall be notified to the Commissioner -

- (a) in the case of a partnership, trust, company, or nonresident individual, in the list tax period in which the partnership, trust, company or individual becomes a vendor; or
- (b) in the case of a resident individual who is outside Lesotho, in the first tax period in which the individual is outside Lesotho.

(3) Where a vendor fails to comply with subsection (2), the nominated person will be the person specified by the Commissioner.

(4) A vendor may by notice in writing to the Commissioner change the nominated person.

(5) Subject to section 76, the nominated person is responsible for any obligation imposed on the partnership, trust, company, or individual under this Act.

Division IV: Application of Act to Partnerships, Unincorporated Associations, Trustees and Agents

Application of Act to Partnerships and Unincorporated Associations

76. (1) This Act applies to a partnership as if the partnership were with the following changes -

- (a) obligations that would be imposed on the partnership are instead imposed on each partner, but may be discharged by any of the partners;
- (b) the partners are jointly and severally liable to pay any amount due under this Act that would be payable by the partnership; and
- (c) any offence under this Act that would otherwise be committed by the partnership is taken to have been committed by each of the partners.

(2) This Act applies to an unincorporated association as if it were a person, but the obligations that would be imposed on the association are imposed instead on each member of the committee of management of the association, but may be discharged by any of those

members.

(3) In a prosecution of a person for an offence that the person is taken to have committed under subsection (1)(c), it is a defence if the person proves that the person -

- (a) did not aid, abet, counsel, or procure the relevant act or omission; and
- (b) was not in any way knowingly concerned in, or party to, the relevant act or omission.

Trustees

77. A person who is a trustee in more than one capacity is treated for the purposes of this Act as a separate person in relation to each of those capacities.

Agents and Auctioneers

78. (1) Where a taxable supply has been made in the circumstances specified in section 8(1 1)(a) and the recipient of the supply is a taxable vendor, the agent may issue a sales tax invoice in accordance with this Act in relation to the supply as if the agent had made the supply; and the principal shall not also issue a sales tax invoice in relation to the supply.

(2) Where a taxable supply has been made in the circumstances specified in section 8(11)(b) and the principal is a taxable vendor, at the request of the agent, a sales tax invoice in relation to the supply may be issued to the agent; and a sales tax invoice shall not be issued to the principal in relation to the supply.

(3) Where sales tax is payable by an auctioneer in respect of the supply of goods, the auctioneer shall charge the purchaser the amount of sales tax payable in respect of the sale by adding the sales tax to the amount of a successful bid, or, in the case of sales out-of-hand, to the purchase price and shall recover that tax from the purchaser.

CHAPTER IX MISCELLANEOUS PROVISIONS

Schemes for Obtaining Undue Sales Tax Benefits

79. (1) In this section -

“scheme” includes any agreement, arrangement, promise, or undertaking whether expressed **or** implied and whether or not enforceable, or intended to be enforceable, by legal proceedings, and any plan, proposal, course of action, or course of conduct; and

“tax benefit” includes -

- (a) a reduction in the liability of any person to pay sales tax;
- (b) an increase in the entitlement of a person to a credit or refund; or
- (c) any other avoidance or postponement of liability for the payment of sales tax.

(2) Notwithstanding anything in this Act, if the Commissioner is satisfied i that a scheme

has been entered into or carried out where -

- (a) a person has obtained a tax benefit in connection with the scheme; and
- (b) having regard to the substance of the scheme, it could be concluded that the person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person to obtain the tax benefit,

the Commissioner may determine the liability of the person who has obtained the tax benefit as if the scheme had not been entered into or carried out, or in such manner as in the circumstances the Commissioner considers appropriate for the prevention or reduction of the tax benefit.

Goods Requiring Registration

80. (1) Where goods require registration under any law, that registration shall not be effected unless the person seeking registration under that law proves to the registering authority that sales tax has been paid in respect of the supply of those goods to the person or the supply is exempt from, or otherwise not subject to, sales tax under this or any other law.

(2) If goods imported into Lesotho have to be cleared under the Customs and Excise Act, 1982, the goods shall not be cleared for collection unless the importer produces proof that sales tax has been paid or that the goods are exempt from sales tax.

(3) Registration or clearance in contravention of this section is null and void.

Prohibition on Advertising

81. (1) A person shall not advertise or hold out to the public or to a purchaser that the sales tax payable in respect of a supply shall be borne or absorbed by the person, or that sales tax will not be considered as an element in the price, or that if sales tax is included in the price it shall be refunded.

(2) Sales tax payable under this Act shall -

- (a) form a part of the price, consideration, or value of the transaction;
- (b) be entered in a different column on the invoice; and
- (c) be recovered from the purchaser by the seller.

(3) Notwithstanding section 5 and subject to this Act, any person **who** states that sales tax is charged in respect of a supply is liable to pay that sales tax to the Commissioner.

International Agreements

82. (1) The Minister may, on behalf of the Government, enter into an agreement with the Government of another country on a reciprocal basis for the prevention of fiscal evasion or avoidance, the rendering of assistance and co-operation and the establishment of a refund system in respect of general sales tax or value added tax collected in the participating countries.

(2) An agreement entered into under subsection (1) shall be laid before the National

Assembly as soon as may be after the agreement is entered into and shall not take effect until it is approved by resolution of the National Assembly but, upon approval, it shall come into operation from the date specified in the agreement.

(3) The Minister may at any time amend agreement entered into under subsection (1), and an agreement so amended shall be laid before the National Assembly as soon as may be after its amendment and if approved by resolution of the National Assembly the agreement shall-

- (a) operate in its amended form; or
- (b) cease to operate,

as the case may be, from the date specified in the amended agreement.

(4) An agreement or amended agreement made under this section shall be published in the Gazette at the same time as the resolution of the National Assembly approving it.

(5) Where an international agreement provides for reciprocal assistance in the collection of tax and the Commissioner has received a request from a country pursuant to that agreement for the collection from any person in Lesotho of an amount due by that person under the tax laws of the country, the Commissioner may, by notice in writing, require the person to pay the amount on a date specified in the notice to the Commissioner for transmission to the proper authority in that other country.

(6) If a person fails to comply with a notice under subsection (5), the amount in question may be recovered for transmission to the proper authority in that country as if it were a tax payable by the person under this Act.

Regulations and Amendment of Schedules

83. (1) The Minister may make regulations .

- (a) for the better carrying into effect of the purposes of this Act;
- (b) to amend a Schedule to this Act;
- (c) to amend any monetary amount set out in this Act;
- (d) to amend the time for filing a sales tax return under section 24; or
- (e) to amend the rate of additional tax imposed under sections 51 and 52.

(2) The regulations may -

- (a) contain a provision of a saving or transitional nature; or
- (b) prescribe specific offences for breach of the regulations.

(3) If the regulations so provide, they may take effect from the date on which this Act comes into effect or at a later date, regardless of whether they are published in the Gazette after a notice under this Act is published in the Gazette.

Repeal

84. Subject to section 85, the Sales Tax Act, 1982, is repealed.

Transitional

85. (1) In this section-
“registrable goods” means goods requiring registration under any law of Lesotho.
- (2) The Repealed Legislation continues to apply to -
- (a) a supply or import of goods or taxable prior to the date on which this Act comes into operation pursuant to section 2; or
 - (b) a supply of registrable goods in Lesotho by any person other than a vendor until the Minister otherwise by notice published in the Gazette.
- (3) All appointments made under the Repealed Legislation and subsisting at the date of commencement of this Act are deemed to be appointments made under this Act; and an oath of secrecy taken under the Repealed Legislation is treated as having been taken under this Act.
- (4) All forms and documents used in relation to the Repealed Legislation may continue to be used under this Act, and all references in those forms and documents to provisions of and expressions appropriate to the Repealed Legislation are taken to refer to the corresponding provisions and expressions of this Act.
- (5) Section 7(1)(v) of the Sales Tax Act, 1982 continues to apply until the Minister provides otherwise in a notice published in the Gazette.

SCHEDULES

SCHEDULE I
(Section 3)

Public International Organisations

African Development Bank
Catholic Relief Services
Co-operative for American Remittances Everywhere
European Development Fund
European Economic Community and agencies
Food and Agriculture Organisation
General Agreement on Tariffs and Trade
Intergovernmental Maritime Consultative Organisation
International Bank for Reconstruction and Development
International Civil Aviation Organisation
International Committee of the Red Cross
International Development Association
International Finance Corporation
International Labour Organisation
International Monetary Fund
International Telecommunications Union
International Voluntary Service
Multinational Programming and Operational Centre

Organisation for Economic Co-operation and Development
Preferential Trade Agreement for Eastern and Southern African States
Skillshare Africa
The Southern African Development Co-ordinating Conference
United Nations related Agencies and specialised Agencies of that Organisation
United States Peace Corps
Universal Postal Union
World Food Programme
World Health Organisation
World Intellectual Property Organisation
World Meteorological Organisation
World University Services

SCHEDULE II **(section 6)**

Goods Prescribed for the Purposes of Section 6(2)(a)

The following goods are prescribed for the purposes of section 6(2)(a):

1. Goods imported into Lesotho in respect of which no customs duty is payable in terms of the Customs and Excise Act, 1982, being -

- (a) goods for Heads of State, Diplomatic, and other Foreign Representatives;
- (b) used personal effects and sporting or recreational equipment, imported as passengers' baggage;
- (c) goods imported in the same aircraft or vehicle as passengers' baggage by any person (other than an import from the Republic of South Africa) and cleared at the place where he or she enters Lesotho, being per person -
 - (i) wine, not exceeding the duty free limit specified in the Customs and Excise Act, 1982;
 - (ii) spirituous and other alcoholic beverages, a total quantity not exceeding the duty free limit specified in the Customs and Excise Act, 1982;
 - (iii) manufactured tobacco, not exceeding the duty free limits as specified in the Customs and Excise Act, 1982;
 - (iv) perfumery, not exceeding the duty free limit as specified in the Customs and Excise Act, 1982; or
 - (v) other new or used goods of a total value not exceeding the duty free limit as specified in the Customs and Excise Act, 1982;
- (d) household furniture and effects, and other removable articles, including one motor vehicle per household and equipment necessary for the exercise of the calling, trade, or profession, being the bona fide property of a natural person (including a returning resident of

Lesotho and members of his or her family), imported for own use on a change of residence to Lesotho, but not including -

- (i) industrial, commercial, or agricultural plant;
 - (ii) alcoholic beverages; or
 - (iii) tobacco goods.
- (e) bona fide unsolicited gifts of not more than two parcels per person per calendar year and of which the value per parcel does not exceed the limit specified in the Customs and Excise Act, 1982 consigned by natural persons abroad to natural persons in Lesotho, but not including goods contained in passengers' baggage, wine, spirits, and manufactured tobacco including cigarettes and cigars;
- (f) goods imported -
- (i) for the relief of distressed persons in cases of famine or other national disasters; or
 - (ii) in terms of an obligation under any multilateral international agreement to which Lesotho is a party;
- (g) goods imported for any purpose agreed upon between the Governments of Lesotho, the Republic of South Africa, Botswana, Swaziland, and Namibia;
- (h) goods temporarily admitted for specific purposes; and
- (i) goods temporarily admitted subject to exportation in the same state -
 - (i) publications and other advertising matter relating to fairs, exhibitions, and tourism in foreign countries, when imported by a tourist agency of a foreign government recognised by the Commissioner for the purposes of this exemption; or
 - (ii) invalid carriages, whether or not motorised or otherwise mechanically propelled.

2. Goods imported into Lesotho in respect of which the Director of Customs and Excise has, in terms of the provisions of the Customs and Excise Act, 1982, granted permission that entry need not be made, being -

- (a) containers temporarily imported;
- (b) human remains;
- (c) goods that, in the opinion of the Director for Customs and Excise, are of no commercial value;
- (d) goods imported under an international carnet; or
- (e) goods of a value for customs duty purposes not exceeding M100, and on which no such duty is payable in terms of the said Act.

SCHEDULE III
(sections 21 and 22)

Sales Tax Invoices, Credit Notes and Debit Notes

1. A sales tax invoice as required by section 21 shall, unless the Commissioner provides otherwise, contain the following particulars -

- (a) the words “sales tax invoice” written in a prominent place;
- (b) the commercial name, address, place of business, registration number, and taxpayer identification number of the vendor making the supply;
- (c) the commercial name, address, place of business, registration number, and taxpayer identification number of the taxable vendor to whom the supply is made;
- (d) the individualised invoice number and the date on which the sales tax invoice is issued;
- (e) a description of the goods or services supplied and the date on which the supply is made;
- (f) the quantity or volume of the goods or services supplied; and
- (g) the consideration for the supply and the amount of sales tax charged.

2. A credit note as required by section 22(1) shall, unless the Commissioner provides otherwise, contain the following particulars -

- (a) the words “credit note” in a prominent place;
- (b) the commercial name, address, place of business, registration number, and the taxpayer identification number of the vendor making the supply;
- (c) the commercial name, address, place of business, registration number, and the taxpayer identification number of the taxable vendor to whom the supply is made;
- (d) the date on which the credit note was issued;

- (e) a brief explanation of the circumstances giving rise to the issuing of the credit note;
- (f) information sufficient to identify the taxable supply to which the credit note relates; and
- (g) the taxable value of the supply shown on the sales tax invoice, the correct amount of the taxable value of the supply, the difference between those two amounts, and the sales tax charged that relates to that difference.

3. A debit note as required by section 22(2) shall, unless the Commissioner provides otherwise, contain the following particulars -

- (a) the words “debit note” in a prominent place;
- (b) the commercial name, address, place of business registration number, and the taxpayer identification number of the vendor making the supply;
- (c) the commercial name, address, place of business, registration number, and the taxpayer identification number of the taxable vendor receiving the supply;
- (d) the date on which the debit note was issued;
- (e) a brief explanation of the circumstances giving rise **to** the issuing of the debit note;
- (f) information sufficient to identify the taxable supply to which the debit note relates; and
- (g) the taxable value of the supply shown on the sales tax invoice, the correct amount of the taxable value of the supply, the difference between those two amounts, and the sales tax charged that relates to that difference.